IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 95 OF 2005

Anant Dattaram Jadhav..... .....Applicant.

Versus

Shyamrao Ganpat Madne & Anr.... .... Respondents.

Mr. R. Sipahimalani i/by V.T.Sipahimalani & Co., for the Applicant.

Mr. Amit Shinde for Respondent No.1.

Mr. D. A. Adsule, APP for State.

CORAM : V.R. KINGAONKAR, J.

DATED : 21ST APRIL, 2006.

P.C.:

By consent, revision application heard finally.

2. Respondent No.1 came to be charge-sheeted for offence of misappropriation on the basis of complaint lodged by present revisional Applicant. The learned Magistrate by his order dated 29th December, 2004 has closed the prosecution on the ground that inspite of several chances the prosecution could not produce evidence and as such the Accused came to be acquitted.

3. It appears that the revision Petitioner / Complainant was transferred to Pune in the Medical Executive Office, Aundh. The summons was issued to him but could not be served since he was not found at the address. Copy of the report submitted by the API on 13th December, 2004 reveals that he made enquiries and came to know that the Complainant / revisional Applicant was transferred to Aundh, Pune and hence he informed one Smt. Kamal Adhav, who was present in the concerned office, to intimate the Complainant to remain present in the Court. It appears that no efforts were taken to issue summons directly at the Pune Office either through police agency at Pune or by postal service.

4. It appears from Roznama dated 13th December, 2004 that the matter was posted for hearing as a last chance to the prosecution and than the learned APP sought adjournment for producing the witnesses. The learned Magistrate considered the police report dated 13th December, 2004 and adjourned the matter for orders to be passed on 29th December, 2004. Thereupon, he passed the impugned order and closed the prosecution’s case.

5. True, several opportunities were given to the prosecution for production of evidence. It appears, however, that effective steps were not taken for service of summons on the Complainant and other witnesses. The trial Court cannot just close the case only because the prosecution has not produced evidence. It is also the duty of the trial Court to ensure that proper service of the summons is effected and witnesses brought before the Court. The trial Court is not helpless in such matters. The trial Court could have called for explanation of the Police Officer or could have directed service of summons through a Special Officer as could have been deemed proper.

6. The Apex Court in the case of **Shailendra Kumar vs. State of Bihar and others,** 2002 Cri.L.J. 568 (SC), has observed that the trial Court has the duty to issue summons to the Investigating Officer if he failed to remain present at the time of trial of the case. The Complainant was not heard at all in the present case. Appropriate steps were not taken to direct service at the new address of the Complainant. It is pointed out by the learned Counsel for Respondent No.1 / Accused that the matter was pending

since long and the prosecution had not been diligent in proceeding with the trial. Even though, the trial could not have been shut without appropriate efforts to secure the presence of the witnesses. The impugned order is, therefore, unsustainable.

7. In the result, I have no hesitation in holding that the impugned order is improper and arbitrary. Consequently, the revision application is allowed and the impugned order is quashed. The learned trial Court shall restore the proceedings to its original position and direct issuance of summons to the Complainant at Pune. The Complainant is directed to appear before the trial Court on 3rd July, 2006. The trial shall be expedited and the learned Magistrate shall dispose of the same as early as possible, preferably within a period of six months.

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